



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 948**

**[Doc. No. AMS-FV-13-0072; FV13-948-2 FIR]**

**Irish Potatoes Grown in Colorado; Decreased Assessment Rate for Area No. 2**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the Colorado Potato Administrative Committee, Area No. 2 (Committee) for the 2013-2014 and subsequent fiscal periods from \$0.0051 to \$0.0033 per hundredweight of potatoes handled. The Committee locally administers the marketing order for Irish potatoes grown in Colorado. The interim rule was necessary to allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

**DATES:** Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Sue Coleman or Gary D. Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS,

USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Sue.Coleman@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following website: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866 and Executive Order 13563.

Under the order, Colorado Area No. 2 potato handlers are subject to assessments, which provide funds to

administer the order. Assessment rates issued under the order are intended to be applicable to all assessable Colorado Area No. 2 potatoes for the entire fiscal period and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on September 1 and ends on August 31.

In an interim rule published in the **Federal Register** on November 22, 2013, and effective on November 23, 2013 (78 FR 69985, Doc. No. AMS-FV-13-0072, FV13-948-2 IR), § 948.216 was amended by decreasing the assessment rate established for Colorado Area No. 2 potatoes for the 2013-2014 and subsequent fiscal periods from \$0.0051 to \$0.0033 per hundredweight. The decrease in the per hundredweight assessment rate allows the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

#### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 80 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 180 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

During the 2011-2012 fiscal period, the most recent for which statistics are available, 15,072,963 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of \$12.60 per hundredweight, the Committee estimates that 66 Area No. 2 handlers, or about 83 percent, had annual receipts of less than \$7,000,000. In view of the foregoing, the majority of

Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for the 2011 Colorado fall potato crop was \$10.70 per hundredweight. Multiplying \$10.70 by the shipment quantity of 15,072,963 hundredweight yields an annual crop revenue estimate of \$161,280,704. The average annual fresh potato revenue for each of the 180 Colorado Area No. 2 potato producers is therefore calculated to be approximately \$896,000 (\$161,280,704 divided by 180), which is greater than the SBA threshold of \$750,000. Consequently, on average, many of the Colorado Area No. 2 potato producers may not be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2013-2014 and subsequent fiscal periods from \$0.0051 to \$0.0033 per hundredweight of potatoes. The Committee unanimously recommended 2013-2014 expenditures of \$55,745 and an assessment rate of \$0.0033. The assessment rate of \$0.0033 is \$0.0018 lower than the 2012-2013 rate. The quantity of assessable potatoes for the 2013-2014 fiscal period is

estimated at 14,360,000. Thus, the \$0.0033 rate should provide \$47,388 in assessment income. Income derived from handler assessments and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Colorado Area No. 2 potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 18, 2013, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Generic Vegetable and Specialty Crops. No changes in those

requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Colorado Area No. 2 potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Comments on the interim rule were required to be received on or before January 21, 2014. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:  
<http://www.regulations.gov/#!documentDetail;D=AMS-FV-13-0072-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, and 13563; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR 69985, November 22, 2013) will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 948**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

**PART 948 - IRISH POTATOES GROWN IN COLORADO**

Accordingly, the interim rule amending 7 CFR part 948, which was published at 78 FR 69985 on November 22, 2013, is adopted as a final rule, without change.

Dated: February 18, 2014

Rex A. Barnes  
Associate Administrator  
Agricultural Marketing Service

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